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No.

In the
SUPREME COURT OF THE UNITED STATES

DECEMBER TERM 1993

J. MORRIS ANDERSON,

Petitioner,

vs.

STEERS, SULLIVAN, McNAMAR & ROGERS , AND
RUTH E. MYER, INDIVIDUALLY,

Respondents.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
****

PETITION FOR WRIT OF CERTIORARI

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EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

QUESTIONS PRESENTED

1. Whether plaintiff/appellant, pro se (an out of State Resident) should have been compelled to post a $10,000.00 bond in order to pursue a Civil Action which the District Court deemed sufficiently meritorious to have denied defendants'/appellees' motions for summary judgment on three counts.

2. Whether an appeal taken to the U.S. Court of Appeals by a pro se appellant is frivolous and should have had sanctions imposed solely on the grounds that the appellee is unrepresented.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

****

PETITION FOR WRIT OF CERTIORARI

Petitioner, J. Morris Anderson, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Seventh Circuit affirming the Order of the United States District Court for the Southern District of Indiana which compelled petitioner to post a $10,000.00 bond in order to pursue his civil action which the lower Court deemed sufficiently meritorious to have denied three of defendants'/appellees' motions for

summary judgment and all motions to strike.

OPINIONS BELOW

The opinion of the Court Of Appeals is reported as Anderson v. Steers, Sullivan, McNamar & Rogers, and Ruth E. Myer. 998 F 2d 497 (7th Cir. 1993) and appears in Appendix A to this petition. The unpublished written opinion of the District Court for the Southern District of Indiana, imposing a $10,000.00 original cost bond upon petitioner appears in Appendix B. The original mandate of the Court below ordering petitioner to pay only single cost appears in Appendix B(1). The unpublished ruling of the Magistrate, denying respondents' motions for summary judgment, adopted by the District Court for the Southern District of Indiana appears in Appendix C. The Memorandum and Order of the District Court for the Eastern District for the Eastern District of Pennsylvania entering a default judgment against Joyce Christmas for infringement appears in Appendix F. The District Court's Order dismissing cause appears in Appendix O. The Entry and memorandum District Court's Order denying Petitioner's Motion for Reconsideration appears in Appendix P.

JURISDICTION

The Court of Appeals' Opinion in the matter was filed on July 7th, 1993. The Court of Appeals' Mandate awarding single cost and no sanctions was filed on July 29th, 1993. The Court of Appeals' Order awarding double cost and imposing sanctions on petitioner was filed on August 13th, 1993. A timely Petition for Rehearing was filed on August 23rd, 1993. The Court of Appeals' denial of the Petition for Rehearing was issued on September 17, 1993 and is set forth in Appendix C. This Court's jurisdiction is invoked under Title 28, U.S.C. 1254(1)

CONSTITUTIONAL & STATUTORY PROVISIONS INVOLVED

Amendment VIII to the United States Constitution is set forth in Appendix D. Amendment XIV to the United States Constitution is set forth in Appendix E.

STATEMENT OF THE CASE

The United States District Court, Southern District of Indiana had jurisdiction pursuant to 28 USC 1332.

HISTORY

Petitioner filed a five count Complaint against respondents arising out of a controversy wherein Ms. Joyce Christmas, a Friend of respondent Ruth Myer, Esquire, had infringed appellant's Miss Black America Trade Mark by incorporating its following names in Indiana: Miss Black America, Miss Black Indiana, and Miss Black Indianapolis.

Ruth Myer, Esquire, as a favor for her friend, Ms. Joyce Christmas, wrote a letter on her Law Firm's (Steers, Sullivan, McNamar & Rogers) Stationery threatening to bring legal action against petitioner, the Black Expo, the co-producer of the Miss Black America Pageant in Indianapolis, Indiana, and other business associates of petitioner providing he used his trademarked Name, Miss Black America, in the State of Indiana. (SEE LETTER ATTACHED TO THE APPENDIX AS APPENDIX G)

Ruth Myer, Esq. did not mail the letter to petitioner. On the contrary, she gave the original letter to the infringer, Ms. Christmas, whereupon, Ms. Christmas, armed with the letter, served it upon Rev. Charles Williams, President of the Black Expo. During a church service at the First

Christian Baptist Church for the Miss Black America Contestants, Ms. Christmas had the letter served upon Rev. Damon Roach. Anderson was negotiating a contract with Rev. Roach. The fiasco caused Rev. Roach to cut off negotiations. The letter was hand delivered to local television stations and newspapers and used as a basis to interrupt petitioner's pageant proceedings, harass and threaten legal action against petitioner and his business associates. All this, in an attempt to shake petitioner down if he and his associates participated in petitioner's production of the 1989 Miss Black America Pageant in Indianapolis Indiana. Respondent, Ruth Myer, affied that she wrote the letter as a courtesy and at no charge. (SEE AFFIDAVIT OF RUTH MYER ATTACHED TO THE APPENDIX AS APPENDIX "H(1)."

JUDGMENT ISSUED AGAINST SERVICE MARK INFRINGER

As a means of continuing his production of the Miss Black America Pageant which petitioner had been producing for over two decades, petitioner filed an action in the United States District Court

for the Eastern District of Pennsylvania against the infringer Joyce Christmas whereupon that Court issued a judgment against Joyce Christmas for the infringement. In addition, petitioner filed an action against respondents; however, that Court dismissed petitioner's Complaint against respondents for lack of personal jurisdiction over them which prompted petitioner to file his cause against them in the District Court for the Southern District of Indiana.

MOTIONS FOR SUMMARY JUDGMENT

On August 20, 1990, pursuant to petitioner having filed his Complaint in the District Court for the Southern District of Indiana, respondents filed several motions for summary judgment seeking to dismiss and/ or strike all five counts of the Complaint; these, in addition to a motion to compel petitioner to post an original cost bond of $10,000.00

THE DISTRICT COURT'S DENIAL OF RESPONDENTS' MOTIONS FOR SUMMARY JUDGMENT

On December 10, 1990, the District Court denied respondents' motions to dismiss Count two,

(interference with business and contractual relationships regarding the Black Expo) Count Three, (interference with business and contractual relationships regarding Rev. Charles Williams, and Count Four of the Complaint (Negligence by defendants in their dealings with petitioner).

REASONS FOR GRANTING THE WRIT

The primary reasons Certiorari should be granted are twofold: (1) This Petition presents an issue which has not been specifically and unequivocally decided by this Court; and (2) the Opinion below conflicts with previous decisions of other Circuits.

CONFLICT WITH OTHER CIRCUITS

For example, the Opinion Below conflicts with the Second Circuit which ruled in Cf. Farmer v. Arabian Oil Co., 285 F2d 720 (2d Cir. 1960) that a bond of $6,000.00 was unwarranted where plaintiff had made a strong prima facie case. Certainly, as concurred by the District Court, petitioner, in the case at bar, made a strong prima facie case.

Clearly, the opinion below conflicts with that

of the Fifth Circuit Court of Appeals in Ehm v. Amtrak wherein the Seventh Circuit's distinguished panel cited Ehm v. Amtrak Board of Directors, 780 F 2d 516 (5th Cir. 1986)(per curiam) as a precedent to affirm the District Court's ruling to impose a $10,000.00 cost bond on appellant/petitioner. In Ehm the District Court, feeling that Ehm's cause lacked merit, required appellant/plaintiff who was pro se to post a $500.00 cost bond as a specific result of appellant Ehm having previously filed three law suits against the same defendant wherein he did not prevail and wherein the total cost assessed against him for the previous actions had totaled $889.00 which he had refused to pay and he was attempting to file a fourth action which the District Court deemed meritless and consequently assessed a $500.00. cost bond.

NO SANCTIONS WERE IMPOSED ON EHM FOR APPEALING TO THE 5TH CIRCUIT DESPITE THE APPARENTLY FRIVOLOUS NATURE OF HIS APPEAL

In Ehm v. Amtrak Board of Directors, 780 F 2d 516 (5th Cir. 1986)(per curiam); The Fifth Circuit Court of Appeals ruled that (this being a novel issue) sanctions would not be imposed against

appellant for bringing a frivolous appeal. This ruling, since this controversy was stated as:

"A novel one for the 5th Circuit."

Unlike the case at bar wherein the Seventh Circuit of Appeals affirmed the District Court's imposition of an unprecedented, extraordinarily burdensome bond of $10,000.00 on petitioner, it went on further (despite, stating, "This being a novel issue") to punish appellant/petitioner for having

even appealed to the Appellate Court (it remanded its original mandate which only imposed single costs) by imposing sanctions of $2,579.95 in addition to double costs of $533.00 on appellant. This, for him having simply taken an appeal, pro se. This, despite the fact that the District Court had never ruled nor implied that appellant's cause was frivolous. The only point defendants had made to the District Court were that plaintiff was a non resident and owned no property in the jurisdiction. However, the District Court ignored the fact that plaintiff/petitioner was not a foreigner per se to

the State and City of Indianapolis, Indiana since he primarily did business in the city of Indianapolis, Indiana where he produced the nationally Televised Miss Black America Pageant.

Undoubtedly, one specific conflict in the case at bar and Ehm v. Amtrak, is that the Fifth Circuit imposed no sanctions on appellant, Ehm, despite the fact that he had repeatedly failed to pay costs levied against him in three (3) suits filed against the same defendant. In addition, appellant Ehm, who had been guilty of filing several suits against the

same defendants as a means of harassment, had only a $500.00 cost bond imposed upon him. In Ehm, a striking difference between the action of the Fifth Circuit and the case at bar was that the bond imposed by the District Court was not unreasonable. A mere $500.00 whereas the bond in the case at bar was an outrageous $10,000.00 - clearly unreasonable and burdensome and fatal to petitioner's cause of action.

In its opinion in Ehm, the Fifth Circuit used **Aggarwal v. Ponce School of Medicine, 745 F.2d**

723, 727-28 (1st Cir.1984) as controlling. The Aggarwal factors include, " the probability of plaintiff's success on the merits, the background and purpose of the suit, and the reasonableness of the amount of the posted security viewed from the perspective of plaintiff and defendant. With these factors in mind, the Fifth Circuit affirmed the $500. but imposed no sanctions.

However, on the contrary the Court below neither used the factors which governed Ehm, nor Aggarwal, it ignored the probability of plaintiff's success on the merits which probability had been clearly established by the District Court's ruling

that three of plaintiff's counts had merit; it ignored the meritorious background and purpose of the suit - in that there had been a judgment against one of the original defendants in the District Court for the Eastern district of Pennsylvania wherein Joyce Christmas had been adjudicated guilty of infringement; the Court below ignored the factor of the reasonableness of the

amount of the posted security viewed from the perspective of plaintiff and defendant by affirming the imposition of an unreasonable $10,000.00 cost bond; and, clearly, the matter of sanctions on the appellate level conflicted with Ehm as a result of the Court Below's imposition of $3,112.95 in sanctions upon petitioner.

Conclusively, if petitioner's original cause had merit, then it follows that his appeal had merit.

In the opinion below, the Panel cited **A & M Gregos, Inc. v. Robertory;, 70 F.R.D. 321 (E.D. Pa 1976)**

In this action the Eastern District of Pennsylvania required plaintiff/appellee to post a cost bond,

> "Since the history of the case left only one possible conclusion, viz. that there was a good chance that defendants would ultimately succeed in proving bad faith."

This action was taken specifically because the Court felt appellant had pursued a claim or defense in bad faith, vexatiously or oppressively.

Plaintiff was "unable to produce any factual support whatever for its claims."

Absolutely, there is a gigantic conflict among the Circuits regarding the imposition of a cost bond and sanctions on a pro se litigant. With regard to the case at bar and A & M Gregos, Inc. v. Robertory, 70 F.R.D. 321 (E.D. Pa 1976), the exact opposite of circumstances exists. The District Court in the case at bar never felt appellant had pursued a claim or defense in bad faith, vexatiously or oppressively.

On the contrary, the District Court specifically denied defendants'/respondents' motions for Summary Judgment by agreeing with petitioner's allegation that defendants/respondents were negligent in their positions as officers of the Court when they published a threatening letter on their letterhead to petitioner but failed to deliver it to him. Instead, they provided it to a reckless trademark infringer who used it detrimentally against plaintiff/petitioner. In addition, the District Court ruled that petitioner had two causes for interference with contractual

relations against respondents.

State Wide Enterprises, Inc. v. United States Gypsum Co., 238 F. Supp. 604 (E.D. Mich. 1965) was cited in the Opinion below as one in support of the Court's decision to affirm the $10,000.00 cost bond.

State Wide does not, in fact, support the Opinion Below. Again, the opinion of the Seventh Circuit below clearly creates a conflict among the Circuits regarding the imposition of a cost bond and sanctions on a pro se litigant. In **State Wide Enterprises, Inc. v. United States Gypsum Co., 238 F. Supp. 604 (E.D. Mich. 1965)** the ruling was solely based on the District Court's Opinion that plaintiff's case lacked merit. State Wide's facts were contradictory to the District Court's decision in the case at bar to impose the $10,000.00 ;and, Statewide's facts were conflicting with those in the Opinion Below to further impose sanctions on petitioner for filing his appeal, pro se.

Unconditionally, in the instance of State Wide Enterprises v. U.S. Gypsum, the Court's reasoning was that the suit was of dubious

merit, and plaintiff lacked financial responsibility the total days of trial were anticipated at 28 days and the issues involved were of a complicated nature.

The maximum amount of days the case at bar could have taken was two days. The issues had been narrowed by the summary judgment process.

The motive of the Court in State Wide Enterprises was to protect the prevailing party from having to bear the cost of defending against utterly meritless contentions.

LENGTH AND COMPLEXITY OF CASE HAD BEEN REDUCED TO A MINIMUM BY USE OF THE SUMMARY JUDGMENT PROCESS

On the contrary, in the case at bar, the District Court confirmed that three of petitioner's contentions had merit. Three Counts survived the summary judgment process. The issues were not complicated and the probable length and complexity of the case had been absolutely reduced to a maximum of two days by Summary Judgment.

Hence, the controversy had been reduced to a simple question of whether defendants were liable

for their negligence in causing damages to plaintiff by providing a reckless trademark infringer a threatening letter on the law firm's stationery which was used detrimentally against plaintiff/petitioner and had caused damage to his contractual relationships.

The trademark infringer had already been adjudicated guilty in the U.S. District Court for the Eastern District of Pennsylvania. Hence, that issue was settled.

Without a doubt, a conflict among the circuits exists when imposing cost bonds upon pro se and out of State litigants which should prompt this Court to make a just decision that a writ of certiorari should issue to review the judgment and opinion of the Court of Appeals in this matter.

AS TO THE QUESTION OF WHETHER AN APPEAL TAKEN TO THE U.S. COURT OF APPEALS BY A PRO SE APPELLANT IS FRIVOLOUS ON THE SOLE GROUNDS THAT THE APPELLEE IS UNREPRESENTED.

Bacon v. American Federation of State, County

& Municipal Employees Council, 795 F.2d 33 (7th Cir. 1986) was cited in the Opinion Below as support for the imposition of sanctions on respondent. In this instance, the opinion of the Seventh Circuit below clearly creates a conflict within itself regarding the imposition of a cost bond and sanctions on a pro se litigant.

Bacon, a pro se plaintiff/appellant was ordered to pay defendants'/appellees' attorney fees as a result of the Court's belief that "his cause was indeed hopeless."

Sanctions of attorney's fees but no double cost were imposed as a means of protecting the prevailing party from having to bear the cost of defending against utterly meritless contentions.

The Court's position in this issue was,

> "When a layman persists in a hopeless cause long after it should have been clear to him as a reasonable (though not law-trained) person, that his cause was indeed hopeless, sanctions should be imposed, as this and other Courts have frequently done in "tax protester" and other frivolous pro se suits."

In the case at bar, the District Court never opined that the cause of appellant/respondent "was

indeed hopeless." On the contrary, the District Court ruled that plaintiff's cause had merit and thereby refused to dismiss his cause on defendants'/respondents' motions for summary judgments.

In Bacon v. American Federation of State, County & Municipal Employees Council, 795 F.2d 33 (7th Cir. 1986), even the Seventh Circuit was divided on the issue of sanctions, in dissenting from the Seventh Circuit's ruling to levy Attorney's Fees on Bacon, Judge Ripple dissented and stated,

> "I respectfully dissent from the award of attorney's fees to the defendant."

In Bacon v. American Federation of State, County & Municipal Employees Council, 795 F.2d 33 (7th Cir. 1986), Cont.

> "In dealing with a pro se litigant, the line between bad faith and mere ineptitude is often difficult to ascertain. Here, I am unable to conclude with certainty that this case presents the sort of frivolous, vexatious appeal which would warrant the imposition of attorney's fees."

In the case at bar, plaintiff/appellant/ petitioner was ordered to pay double the cost which appellees had spent and was ordered to pay

sanctions of $2,579.95 as punishment for having appealed the District Court's order for him to post a $10,000.00 bond. How can the appeal of an Order to post such a bond be Frivolous when the cause was adjudicated by the District Court as not frivolous?

Causing a plaintiff pro se to pay costs when he does not prevail is one thing, but to punish the plaintiff pro se with sanctions for filing an appeal is another. This punishment, despite the fact that the District Court never gave the slightest indication that the case was frivolous and void of merit.

In the opinion below, the panel cited **McNeil v. United States, 61 U.S.L.W. 4468, 4470 (U.S. May 17, 1993).**

Again, the opinion of the Seventh Circuit Below is not supported by its own previous rulings, thereby creating a conflict even within itself regarding the imposition of sanctions on a pro se litigant. The facts of McNeil are absolutely contrary to the case at bar.

Pleading pro se, McNeil made a fatal mistake

by filing a Complaint in Federal District Court prior to exhausting all administrative remedies of the U. S. Public Health Services.

In the case at bar, plaintiff/petitioner, pro se did not make any fatal mistakes period. Absolutely, there was no justifiable cause for a $10,000.00 cost bond and subsequent dismissal of his action for not having paid the bond and an award of attorneys' fees and double cost for having appealed the issue. Nothing in Petitioner's Cause appeared to have it labeled as frivolous to the extent he should have been punished to the tune of #3,112.95. The issue in McNeil is different from the issue at bar. They are horses of two different colors. Clearly, there is a conflict in the two rulings.

This Court should grant certiorari here to explicitly rule against excessive and lethal cost bonds and punitive sanctions being imposed upon pro se litigants who are not guilty of filing frivolous causes or filing frivolous appeals. This

Court should make it clear that Cost Bonds and Sanctions should not be applied as a means to dismiss legitimate causes of action of pro se litigants who have been damaged and seek to enforce the 14th Amendment's constitutional rights of equal protection of the law and their rights of due Process.

A R G U M E N T

Appellant should not have had sanctions imposed upon him because the appeal was not frivolous. Nothing in petitioner's cause illustrates the filing of the Complaint or the appeal to harass, delay or embarrass defendants/respondents. It is emphasized that the fact that the District Court had clearly ruled that petitioner's claim had merit when it denied three of respondents' motions for summary judgment mitigated his cause or his appeal being deemed frivolous. Without a doubt, the "frivolous" requirement has not been met in petitioner's cause.

Clearly the sanction is a cruel and unusual punishment levied on petitioner for appearing pro se which violates the spirit of the, "cruel and

unusual punishment clause of the 8th Amendment to the Constitution. (SEE APPENDIX "I")

Had the District Court ruled petitioner's cause had no merit or that petitioner's cause was indeed hopeless, petitioner would have abandoned the cause and not appealed. Petitioner was not a foreigner per se to the State of Indiana since he did a large portion of his business in Indiana. Petitioner had not been accused of lacking financial responsibility by defendants nor the District Court. Viewed from the perspective of plaintiff and defendant, no consideration was given in favor of plaintiff.

Clearly, the District Court is provided a means for dispensing with frivolous law suits filed by pro se litigants other than by imposing a bond which is fatal to the cause of action. Clearly, the granting of a motion for summary judgment will keep a frivolous appeal away from the Appellate Courts. The Summary Judgment procedure was not utilized to dismiss petitioner's action because his cause was not frivolous.

The imposition of the bond and the sanctions

were unreasonable. The $10,000.00 bond was unprecedented and contrary to F.R.C.P., 1. It is absolutely clear that the $10,000.00 bond did not serve to secure the just,, speedy and inexpensive determination of petitioner's action.

It is axiomatic that the imposition of the excessive $10,000.00 Bond on petitioner served to preclude his constitutional right to sue. This, whether the bond imposed by the District Court or the Sanctions imposed by the Appellate Court were intended to curtail his constitutional rights or not, they served as a specific vehicle which did, in fact, thwart the just, speedy and inexpensive determination of petitioner's action. Clearly this action is contradictory to F.R.C.P. 1

(SEE F.R.C.P. 1 ATTACHED TO THE APPENDIX AS APPENDIX "K")

The Opinion Below is defective, not because the District Court does not clearly have the absolute discretionary right by statute and by the Federal rules of Civil Procedure to impose a cost bond on petitioner and not because the Appellate Court does not clearly have the right to use its

discretion to impose sanctions upon petitioner, but because the application of those rights were not liberally construed, they both abused their discretion. The bond and the sanctions were construed in the most favorable light of the defendants. No doubt, the bond is excessive and it specifically precluded petitioner's right to sue without excessive bond requirements and the sanctions did impose an unusual and cruel punishment in violation of the Eighth Amendment to the United States Constitution.

The damages petitioner suffered, supra, as a result of respondents' negligent actions prompted him to commence the action in the U.S. District Court for the Eastern District of Pennsylvania as a means of surviving in his life's work. (The Production of the Miss Black America Pageant). There was nothing frivolous about the action. All the effort and expense petitioner put into the prosecution of his cause provides living proof that he didn't file his action in bad faith, vexatiously or oppressively. Petitioner spent all his available funds commencing the prosecution of this action.

PETITIONER COULD NOT AFFORD THE COST OF A LAWYER

Petitioner was unable to acquire a lawyer to represent him because of the cost involved. Petitioner was required to expend vast sums to travel to Indianapolis, Indiana to prosecute respondents in the District Court which had personal jurisdiction over them. Petitioner was left with no alternative but to represent himself in this action.

PETITIONER USED EVERY MEANS AVAILABLE TO HIM TO SHOW THAT HE COULD NOT POST THE BOND

In the Opinion Below, the Court stated "Petitioner had made no effort to show that he could not post the bond."

Opposite to what was stated in the Opinion below, petitioner, indeed, had stated from the outset the bond was burdensome. In the initial response of petitioner to respondent's motion requesting a bond, petitioner asserted the financial hardship of the bond upon him in his memorandum of law: (SEE PLAINTIFF'S RESPONSE TO MOTION FOR BOND ATTACHED TO THE APPENDIX AS APPENDIX "M")

> "Were this Honorable Judicial Body to grant defendants' motion and impose a

> financial burden upon plaintiff in the form of a bond, it would in fact, cause plaintiff to endure double financial woes - all at the hands of defendants. Plaintiff is already suffering anguish, heartache and misery and pain as a result of defendants' malicious attacks upon him."
>
> "Defendants are moving this Court to impose a monstrous, and unusual financial burden upon plaintiff as a specific means of making it difficult for plaintiff to prosecute them for the tortious, civil wrongs they committed against him as follows:"

Counter to what was stated in the Opinions Below, in Plain English, when plaintiff opposed the motion of defendants to impose a $10,000.00 bond, plaintiff stated that the imposition of the bond would prevent him from prosecuting his cause of action.

(SEE PLAINTIFF'S RESPONSE TO MOTION FOR BOND ATTACHED TO THE APPENDIX AS APPENDIX "M")

> As a specific result of the civil wrongs perpetrated against plaintiff, by defendants, he has lost money to the point where he can not afford to post a bond as a means of prosecuting defendants. It is the fault of defendants that plaintiff is without funds. The specific purpose behind defendants moving this Court to impose a bond upon plaintiff is to place a financial deterrent in front of plaintiff to thwart his efforts in prosecuting them for their tortious civil wrongs against him.

Contrary to what was stated in the Opinion Below, petitioner stated and re-stated the burden of the bond from the time the motion was filed by respondents in the District Court. Petitioner went on to state fatal aspect of the bond in each and every pleading related to the cost bond. This, all the way up until he filed a petition for a rehearing to the Seventh Circuit Court of Appeals.

(SEE PLAINTIFF'S MOTION TO RECONSIDER THE IMPOSITION OF THE BOND ATTACHED TO THE APPENDIX AS APPENDIX "N")

In petitioner's objection and motion to reconsider the District Court's ruling of July 16, 1992 wherein the bond was imposed, petitioner declared the following in his legal argument:

> "The bond totaling $10,000.00 imposes a monstrous financial burden upon plaintiff. plaintiff has already suffered enough because of the damages he experienced as a result of defendants' negligence as cited in the Complaint."

Contrary to what was stated in the Opinion Below, Petitioner did state in his motion to reconsider the bond that the $10,000.00 bond was an unreasonable estimate of the costs likely in a

lawsuit of this character as follows: (SEE PLAINTIFF'S MOTION TO RECONSIDER THE IMPOSITION OF THE BOND ATTACHED TO THE APPENDIX AS APPENDIX "N")

> Defendants cite their expenditure of approximately $1,100.00 to defend against plaintiff's Complaint which was originally filed in the Eastern District of Pennsylvania. Certainly there is nothing defendants have alleged to justify compelling plaintiff to post a $10,000.00 bond, which is extremely excessive. Therefore, the amount of the bond should be reduced within reason and a plausible amount of time alloted in which to post said bond.

In petitioner's Appellant Brief to the Seventh Circuit Court,

(SEE APPELLANT'S BRIEF ATTACHED TO THE APPENDIX AS APPENDIX "Q")

petitioner absolutely exerted a yeoman's effort, "to show that he could not afford to post the bond." Petitioner stated with crystal clarity that he could not afford the bond as follows:

> "By virtue of the Lower Court having granted appellees' motion to impose a burdensome $10,000.00 bond upon appellant, it in fact, punished appellant and forced him out of Court - this, because the financial burden was more than he could endure. Clearly, the imposition of the $10,000.00 bond served as a means of punishing appellant for bringing appellees into Court to answer to alleged Civil Wrongs

> perpetrated against him in the first place. The $10,000.00 bond sent a clear, farewell message to plaintiff as follows: "Regardless of how much you've been wronged by a defendant who resides in a different State, don't file suit against him unless you're prepared to post a $10,000.00 Bond."
>
> Clearly, this cause was commenced after Joyce Christmas incorporated his Miss Black America Service Mark and used the letter which was negligently supplied by respondents to threaten him, harass him and attempt to shake him down. Petitioner had no alternative but to prosecute the wrongdoers. However, he is the one who has been prosecuted and punished for initiating a legitimate cause of action.

This Court should take this opportunity to clarify this controversy and provide just guidelines to all the Circuits regarding the imposition of Cost Bonds and Sanctions upon pro se litigants. This Court should take this opportunity to provide guidelines as to what is or is not a frivolous cause of action.

Petitioner is not involved with any groups out there who set out to waste the Court's time, such as tax protestors, or those who have problems with the legal system. Petitioner has no problem with using lawyer to represent him. The fact is, he

could not afford representation. Hence, he should not be punished for not being able to afford representation. He should not be punished for exercising his constitutional right to represent himself.

This Court should grant certiorari here to explicitly rule that cost bonds and sanctions should only be applied to pro se litigants and represented litigants who abuse the judiciary system by filing meritless, frivolous causes.

This Court should grant certiorari here to create a means by which to eliminate the possibility that excessive bonds and sanctions will be imposed on pro se litigants solely because the litigants are unrepresented.

The position of the District Court should have been to implement the expressed Federal Policy of securing the inexpensive determination of every action as espoused by F.R.C.P., 1. Prior to imposing the fatal $10,000.00 bond, the District Court should have taken into consideration that the

following tests weighed heavily in petitioner's favor: (1) likelihood of his success on the merits; (2) probable length and complexity of the case; (3) whether petitioner had pursued his claim in bad faith, vexatiously or oppressively; and finally, (4) the rule should have been interpreted liberally in favor of petitioner, so as not to preclude his right to sue through excessive bond requirements.

The only means petitioner had to seek a redress of his grievances against respondents was by filing suit in the Southern District of Indiana. This was as a result of petitioner's action against respondents having been dismissed in the Eastern District of Pennsylvania for lack of that Court's personal jurisdiction over them. Clearly the $10,000.00 bond absolutely did not provide a just and inexpensive determination of petitioner's cause of action.

Without a doubt, this High Principled Court of last resort should clarify the law and in the name of justice provide a means by which a foreign litigant can gain access to the Courts and inexpensively file a non-frivolous law suit.

DENIAL OF EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT

Coady v. Aquadillia Terminal, Inc., 456 F2nd at 677

> "To require all foreign plaintiffs, as such, to post substantial security as a condition to access to the courts may well be an unconstitutional denial of equal protection."
> (SEE 14TH AMENDMENT ATTACHED TO APPENDIX AS APPENDIX "J")

In the Opinion Below, the Seventh Circuit stated two reasons petitioner should have been required to post a $10,000.00 bond: (i) frivolous character of the litigation; and, (ii) the fact that petitioner was unrepresented, Anderson v. Steers, Sullivan, McNamar & Rogers, and Ruth E. Myer. 998 F 2d 497 (7th Cir. 1993)

> "The apparently frivolous character of this litigation and the fact that the plaintiff is an unrepresented individual made the defendants' motion for posting of such a bond a plausible one."

The Statement, supra, as to "frivolous character," is clearly contradicted by the statement which was made by Magistrate, J. Patrick Endsley for the District Court when it denied three of respondents' Motions for Summary

Judgment; On December 6, 1990 at 4, 5, and 6.

(SEE DISTRICT COURT'S DENIAL OF 3 OF RESPONDENT'S MOTIONS FOR SUMMARY JUDGMENT ATTACHED TO APPENDIX AS APPENDIX "E(3) & E(4)

Counts II and III

"Plaintiff's second and third counts allege tortious interference with a business relationship between the plaintiff and the Indianapolis Black Expo. The elements of this tort are: 1) the existence of a valid business relationship; 2) the defendants' knowledge of the relationship; 3) the defendants' intentional inducement of breach of contract; 4) the absence of justification; and 5) damages resulting from the defendants' action. Near East Side Community Organization v. Hair, 555 N.E.2d (Ind. St. App. 1990) Johnson v Hickman, 507 N.E.2d 1014 (Ind. Ct. App. 1987). While the defendants claim the plaintiff has failed to allege the defendants' knowledge of any business relationship, the Court notes that plaintiff has alleged such a relationship. Paragraph 39 of the Complaint states in part, "Defendants had proof positive that plaintiff and his Miss Black America Pageant had entered into a contractual relationship to become a part of the Indiana Black Expo. . ." The Court finds this to be a sufficient allegation of defendants' knowledge."

"The defendants also claim that plaintiff has failed to allege that the defendants lacked justification to act as they did. While it is true that Anderson makes no such specific allegation, the fact that he attributes to defendants the specific goal

of ruining his contractual relationship (Complaint p. 16) indicates to the Court that Anderson believes the defendants acted wholly without justification. Holding the plaintiff to a pro se standard of pleading (which the Court will discuss further below), the Court finds that the plaintiff has made sufficient allegations to sustain a claim for interference with a business relationship."

"Whether the defendants had knowledge of any contractual relationship between Anderson and the Black Expo, and whether the defendants' acted with justification are trial issues, as is the issue of damages. The allegations are sufficient, however, for the claims to survive dismissal at this stage. Therefore, defendants motion to dismiss is denied with respect to Counts II and III."

Count IV

"Count IV of plaintiff's complaint alleges that defendants acted negligently in their dealings with him. While it seems difficult to see how an Indianapolis Attorney and her lawfirm (sic) could have a duty to a Philadelphia promoter, the fact is that the defendant Ms. Myer drafted a letter threatening plaintiff with legal action. The letter, instead of being sent to the addressees, was distributed in Indianapolis to people interested in the Black Expo. It is obvious that a

letter accusing an individual of unlawful conduct could damage contractual relationships."

"The duty of defendants was to refrain from damaging his business in

> their representation of Ms. Myer's friend. To threaten suit is sometimes the duty of an attorney. To do so privately (i.e. by sending the letter to the threatened party) is part of an attorney's responsibility. If Joyce Christmas caused the letter to become public and damage the plaintiff, the fact that she was in possession of the letter was due to Attorney Myer's failure to send it to plaintiff. Whether the defendants breached their duty to plaintiff is a trial issue, but plaintiff alleged a duty, a breach of that duty, and that he suffered damages. Thus, the defendants' motion to dismiss is denied s it pertains to Count 4 of the Complaint."

The District Court made it crystal clear, supra, that it did not believe petitioner's cause was frivolous. Hence, the "frivolous" requirement, as stated in the Opinion Below, was not met in the case at bar.

The Supreme Court has never ruled that an expensive and fatal bond should be imposed on a litigant solely because he or she appears pro se. This presents a conflict between this Court and any Circuit which imposes a fatal bond on a litigant because he is foreign to the jurisdiction and appearing pro se.

A MATTER OF EQUITY

In the Opinion Below, the Seventh Circuit states:

> "It may seem obvious that it (the appeal) is not frivolous".
>
> "Frivolousness is determined, however, not in the abstract but in relation to the arguments actually made by the appellant. *In re Hendrix*, 986 F. 2d 195, 200-01 (7th Cir. 1993)

Petitioner believes he pled his case well. Even if petitioner did not make the most eloquent pleading of his case, the record of the pleadings in general and the law of equity and justice made a case for him that his cause was not frivolous. Since neither the District Court nor the Court Below has pointed out the violation of any procedural rule which would deem his cause frivolous, petitioner undoubtedly deserved not to be prevented from securing the just, speedy and inexpensive determination of his action in accord with the requisites of F.R.C.P., 1.

It is without doubt that petitioner made a case in his appeal with plenty of teeth in his appellate brief as follows:

> "The $10,000.00 Plaintiff's Bond imposed a monstrous and unusual financial burden upon appellant which made it difficult if not impossible for him to prosecute appellees for the tortious civil wrongs they committed against him."

In the Opinion Below, the Court stated,

> "The Supreme Court has "never suggested that procedural rules in ordinary civil litigation should be interpreted so as to excuse mistakes by those who proceed without counsel." McNeil v. United States, 61 U.S.L.W. 4468, 4470 (U.S. May 17, 1993).

It is admitted that petitioner appeared pro se. However, that is the only thing in common petitioner has with McNeil. What mistakes did petitioner make? The fact that petitioner proceeded pro se didn't cause him to make any fatal mistakes. The only way petitioner could afford to appear was without counsel. Providing the District Court or the Appellate Court had pointed out flaws or had specifically pointed that petitioner made mistakes which deemed his cause frivolous, he should not complain about the sanctions or the bond. However, being unable to afford counsel in a civil action should not automatically cause an action to be deemed frivolous.

In **Coady v. Aquadillia Terminal, Inc.**, 456 F2nd at 679, (emphasis added) the Court offered positive direction to the issue at bar whose position this Court is urged to take.

> "Therefore, we emphasize that the District Court is under an obligation to evaluate each case individually, and to exercise its inherent discretion to apply the requirements of Rule 5 so as to facilitate a just and speedy disposition on the merits, as required by Fed R. Civ. P.1.

Therefore, this would be the perfect opportunity for this Court to issue a mandate which would provide a means for all Circuit Courts to evaluate each case individually and facilitate a just and speedy disposition on the merits, as required by Fed. R. Civ. P.1.... This, even if the litigant is **pro se** and foreign to the jurisdiction.

CONCLUSION

For the reasons set forth above, a writ of certiorari should issue to review the judgment and opinion of the Court of Appeals in this matter.

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VERIFICATION
****

J. MORRIS ANDERSON hereby states he is the petitioner in the foregoing Petition for writ of certiorari and he is authorized to take this verification, verifying that the statements therein are true and correct to the best of his knowledge, information and belief. The undersigned understands the statements therein are made subject to the penalties of 18 Pa. cc.C, section 4904 relating to unsworn falsifications to authorities and declares under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

_____
J. Morris Anderson
Dated: December 14, 1993